UNITED STATES COURT OF APPEALS
For the Second Circuit
United States Courthouse
40 Foley Square
New York 10007

George Lange III
Clerk

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the twenty-fourth day of June, one thousand nine hundred and ninety-eight.

P.C. Films Corp.
Plaintiff-counter-defendant-appellant

v

Turner Entertainment, et. al.,
defendants-counter-claimants-appellees.

A petition for rehearing containing a suggestion that the action be reheard in banc having been filed herein by the appellant P.C. Films Corp.

Upon consideration by the panel that decided the appeal, it is Ordered that said petition for rehearing is **DENIED.**

It is further noted that the suggestion for rehearing in banc has been transmitted to the judges for the court in regular active service and to any other judge that heard the appeal and that no such judge has requested that a vote be taken thereon.

FOR THE COURT
GEORGE LANGE III
By: Beth J. Meador
Administrative Attorney

UNITED STATES COURT OF APPEALS
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Clerk

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 23rd day of February, one thousand nine hundred and ninety-eight.

PRESENT: HON. Frank X. Altimari
HON. Fred I. Parker
HON. Damon J. Keith

Circuit Judges

Docket No: 97-7399

P.C. FILMS CORP.,

Plaintiff-Counter-Defendant-Appellant

v

MGM/UA HOME VIDEO INC.,
MGM/UA COMMUNICATIONS CO.,
WARNER HOME VIDEO, INC.,
TURNER ENTERTAINMENT CO,

Defendants-Counter-Claimants-Appellees.

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the Southern District of New York and argued by counsel.

ON CONSIDERATION WHEREOF, if is now hereby **ORDERED, ADJUDGED, AND DECREED** that the judgment

of said district court be and it hereby is affirmed in accordance with the opinion of this court.

FOR THE COURT
GEORGE LANGE III
By: Beth J. Meador
Administrative Attorney

The Honorable Damon J. Keith, of the United States Court of Appeals for the Sixth Circuit, sitting by designation.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

August Term, 1997

(Argued: September 26, 1997) (Decided: FEB 23, 1998)
Docket No. 97-7399

P.C. FILMS CORP.,

Plaintiff-Counter-Defendant-Appellant,

V.

MGM/UA HOME VIDEO INC.,
MGM/UA COMMUNICATIONS Co.,
WARNER HOME VIDEO, INC.,
TURNER ENTERTAINMENT CO.,

Defendants-Counter-Claimants-Appellees.

BEFORE: ALTIMARI, PARKER and KEITH, Circuit Judges.

Appeal from a judgment of the United States District Court for the Southern District of New York (Barbara S. Jones, Judge) denying plaintiff-appellant's request for a declaratory judgment that the defendants' distribution license for the film "King of Kings" terminated on the expiration of the film's initial copyright term and from a subsequent judgment of the same court dismissing plaintiff-appellant's additional claims and defendants-appellees counterclaims in accordance with its decision to deny declaratory judgment.

Affirmed.

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* The Honorable Damon J. Keith, of the United States Court of Appeals for the Sixth Circuit, sitting by designation.

Carl I. Kaminsky, New York, NY (Richard L. Yellen, New York, NY, of counsel), for Plaintiff-Appellant.

Stephen F. Huff, New York, NY (Tom J. Ferber, Paige A. Moore, Gary R. Kline, Pryor, Cashman, Sherman Flynn, New York, NY, of counsel), for Defendants-Appellees.

PARKER, Circuit Judge:

Plaintiff-appellant P.C. Films Corp. ("P.C. Films") appeals from a judgment of the United States District Court for the Southern District of New York Barbara S. Jones, Judge denying P.C. Films' request for declaratory judgment that a grant of a "perpetual and exclusive right to distribute, the motion picture "King of Kings" terminated upon the expiration of the initial copyright term of the picture. P.C Films' claim for declaratory relief was the first of six in its complaint filed in 1991, but the parties agreed to proceed by a bench trial on stipulated facts as to the first claim only. The remaining claims including copyright infringement, unfair trade practice, wrongful possession, and failure to provide an accounting were subsequently dismissed by the district court in accordance with its opinion on the declaratory judgment claim. A final judgment was entered accordingly. For the reasons stated below, we affirm.

I. BACKGROUND

The Film "King of Kings" ("Film,") was based on a screenplay written by Philip Yordan for Samuel Bronston Productions, Inc.,("Bronston") as a "work made for hire." In 1960, Bronston sought financing for the Film in exchange for which it would license distribution rights in the Film. On August 4, 1960, following months of negotiations conducted by sophisticated and expert parties, each represented by counsel, Bronston and Metro-Goldwyn-Mayer Inc. ("MGM") entered into an agreement ("Basic Agreement") for the production, financing and distribution of the Film.

The Film was first exhibited on October 20, 1960. Plaintiff P.C. Films is Bronston's assignee in bankruptcy, as a result of a

1967 bankruptcy proceeding in which Bronston assigned its interests in the Basic Agreement and the copyright in the Film to P.C. Films. Through a series of mergers and name changes, Turner Entertainment Co. ("Turner") is the successor in interest to MGM. Turner continues to exercise distribution rights in the Film. Warner Home Video, another named defendant in the action, is distributing the Film in home video pursuant to licenses obtained from Turner.

Pursuant to the terms of the Basic Agreement, MGM provided promissory notes to finance $5 million of the Film's total production budget (which was then approximately $ 6 million, although it later increased),[1] in return for which MGM received the exclusive right to distribute the Film worldwide, except in certain countries.

8 . . . subject to the Provisions of paragraph 11 below, [MGM] shall retain in perpetuity the exclusive right to distribute the said motion picture throughout the world except in Spain, Portugal, Germany, France, Belgium, Holland and Luxembourg...[2]

11. . . [MGM] shall be vested with the perpetual and exclusive right to distribute the said motion picture "KING OF KINGS" throughout the territories in which [MGM] acquire[s] rights

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[1] By a complicated formula in § 8 of the Basic Agreement, MGM was to recoup its advances and certain other fees and expenses from the gross receipts collected by MGM from distribution of the Film, and after recoupment, MGM agreed to pay 60% of "net profits to Bronston. To date, the Film has not Generated sufficient revenue for Bronston or its successors to receive any monies under this provision.

[2] Prior to the execution of the Basic Agreement, Bronston had assigned the distribution rights in the motion picture for Germany, France, Belgium, Holland and Luxembourg to Nazareth Production Company ("Nazareth"), a party to the Basic Agreement. Pursuant to § 9 of the Basic Agreement, MGM was given the option to acquire for $ 1 million the exclusive right to distribute the Film in the countries reserved to Nazareth, an option which MGM exercised on December 2, 1960. Accordingly, by the end of 1960, MGM had "perpetual" distribution rights in the Film for the entire world except Spain and Portugal.

hereunder . . . .

According to Exhibit I of the Basic Agreement, MGM was granted "the sole and exclusive right and license, under copyright and other protection" to distribute the Film, and was granted various other incidental rights with respect to the Film, including the right to exhibit, exploit, market and televise the Film, to use the negative and soundtrack from the Film for the purpose of advertising the Film, and to "exercise all rights, licenses and powers of every kind which [Bronston] has acquired or may acquire in or with respect to the literary, dramatic and/or musical material... MGM was also granted a derivative right to create elements to promote the Film and the right to make copies. Bronston was to own the negative and other physical materials to the Film Bronston retained all rights to the music soundtrack, the exclusive right to the novelization of the Film and, subject MGM's written approval, the right to make a sequel. MGM also agreed that if it was not distributing the Film in a particular country after 21 years following MGM's general release of the Film or 24 years from the date of the Agreement, whichever came first, Bronston had the right to negotiate for the release of the Film by some other distributor, provided MGM was first notified of Bronston's intention and given a reasonable time to undertake the distribution itself.

The Basic Agreement states, and Turner does not contest, that Bronston is the sole proprietor of the copyright in the Film. MGM was granted the "authority and power of attorney to assert, prosecute, handle and settle" all claims against any person "for the unauthorized or illegal use, copying, reproduction, release, distribution, exhibition or Performance of the Film. As to registration of the copyright in the Film, Bronston was required to "place a proper copyright notice in the main title of the photoplay, in conformity with the laws of the United States governing the form and content of copyright notices, designating [Bronston] as the copyright proprietor." The same section provided that MGM:

> shall take such steps, if any, with regard to the registration of the copyright in the United States Copyright Office (in the name of [Bronston] as copyright proprietor) as it normally and customarily takes with respect to its own photoplays.

The Film was registered in 1962 as a copyrighted work under the Copyright Act of 1909. The application to register the copyright, filed with the copyright office on October 15, 1962, was signed by MGM in the name of Bronston and MGM as co-claimants. Benjamin Melniker, MGM Vice President and General Counsel, who took the lead in the negotiations of the Basic Agreement in 1960, testified in a deposition in this case that MGM,s name was added to the initial registration to enable it to register and hold the copyright in trust for Bronston. According to Meiniker, this was done so that Bronston could take advantage of an arrangement MGM had with the copyright office which facilitated the process of depositing copies with the copyright office.

There was no provision specifically requiring Bronston to register the Film for the renewal term. Nor did MGM receive a power of attorney to renew the copyright. Nevertheless, on October 25, 1989, Turner registered the renewal copyright in the names of Bronston and Turner as co-claimants as MGM had done for the original copyright registration, On December 18, 1989, P.C. Films filed a second renewal application, naming P.C. Films as the sole copyright claimant. The parties agree that, as a work originally registered under the Copyright Act of 1909, the renewal period in the Film does not expire until after 2036. See 17 U.S.C. § 304(a).

Against this background, P.C. Films appeals the district court's refusal to declare that the distribution license and other rights created by the Basic Agreement terminated in 1989, upon expiration of the initial copyright term of "King of Kings."

II. DISCUSSION

A. The Nature of the Distribution License

Under the Copyright Act of 1909, a transfer of anything less than the totality of rights commanded by copyright was automatically a license rather than an assignment the copyright. See 3 Nimmer on Copyright § 10.01 [A] , at 10-5-10-6. The Basic Agreement expressly provides that Bronston retained legal title in the Film, that is, remained the copyright proprietor. Bronston

granted to MGM one of the most significant of its copyright rights in the Film, namely the right to distribute, as well as various other incidental rights, while retaining other copyright rights, such as novelization and sequelization rights. The Basic Agreement is, and was clearly intended to be, an exclusive license. Moreover, it is a license of federal copyright rights. Not only was registration of the Film with the United States Copyright office required pursuant to the terms of the Basic Agreement, but MGM acquired copyright rights which it could protect through copyright infringement actions because it had the power of attorney to bring such actions, thereby giving MGM the full protection afforded by the federal copyright laws. As a license of federal copyright rights, the Basic Agreement was subject to the provisions, principles and policies of federal copyright law.

B. A License of the Renewal Term

One of the central concepts of federal copyright law is that the renewal period is not merely an extension of the original copyright term but a "new estate . . . clear of all rights, interests or licenses granted under the original copyright." G. Ricordi & Co. V. Paramount, Pictures, Inc., 189 F. 2d 46.9, 471 (2d Cir.), cert. denied, 342 U.S. 849 (1951). As explained by the United States Supreme Court, the purpose of the right of renewal is to "Provide[] authors a second opportunity to obtain remuneration for their works." Stewart v. Abend, 495 U.S. 207, 217 (1990).

Although it arguably follows as a matter of logic that if the purpose of the "new estate" concept is to permit authors, "originally in a poor bargaining position, to renegotiate the terms of the grant once the value of the work has been tested," Stewart, 495 U.S. at 218-19, a copyright holder should never be able to convey rights in the renewal term until that term commences, this has never been the case. The Supreme Court has consistently allowed authors to assign their rights in the renewal term before that term commences. Miller Music Corp. v. Charles N. Daniels, Inc., 362 U.S. 373, 375 (1960); Stewart, 495 U.S. at 215. This Circuit has followed suit. See,e.g., Corcovado Music Corp. v. Hollis Music, Inc., 981 F. 2d 679 (2d Cir. 1993). In so doing, we have reconciled the position of allowing authors to convey

rights in the renewal term with the goal of protecting them from exploitation by creating a presumption against the conveyance of renewal rights. Id. at 684 ("[T] here is a strong presumption against the conveyance of renewal rights . . . . [This presumption] serves the congressional purpose of protecting authors' entitlement to receive new rights in the 28th year of the original term...)

We have held that the general presumption against the conveyance of renewal rights may be rebutted where the author includes "language which expressly grants rights in 'renewals of copyright' or 'extensions of copyright.' " Id. (quoting 2 Nimmer on Copyright § 906[A], at 9-71 to 9-72). Further, "general words of assignment can include renewal rights if the parties had so intended... Siegel v. National Periodical Pubs, Inc., 508 F.2d 909, 913 (2d Cir. 1974) (holding that the words "forever" and "hereafter" embraced the renewal term). See also Corcovado Music Corp., 981 F.2d at 684-85 (finding no assignment of renewal rights). The intention to convey renewal rights may also be supported by extrinsic evidence. See, e.g., Venus Music Corp. v. Mills Music, Inc., 261 F.2d 577, 578-79 (2d Cir. 1958).

The Basic Agreement does not expressly refer to rights in the renewal period. However, the Basic Agreement granted MGM the "perpetual and exclusive right to distribute" the Film. The dictionary definition of "perpetual, includes "continuing forever. See Webster's Third New International Dictionary 1684 (1981). Thus, "perpetual" is sufficiently synonymous with "forever" as to make Siegel controlling precedent. Even if Siegel were not controlling, the conclusion that the parties in this case intended to convey rights in the renewal term is supported by extrinsic evidence, namely the testimony of the sole surviving participant in the negotiations, MGM's Vice President and General Counsel, Benjamin Melniker. Melniker, whose deposition was part of the stimulated facts on which plaintiff's declaratory judgment claim was tried and whose testimony was not contradicted, testified that MGM would not have financed the picture for less than a perpetual term and that, in his understanding, the term "Perpetual" meant forever, was not limited to any specific term of years, and was not coterminous with the initial copyright term.

It is true that the Basic Agreement does not impose any specific obligation on Bronston to renew the copyright, but this oversight

may be explained by the fact that MGM believed it could register the copyright renewal for Bronston and MGM as co-claimants, as it did with the initial copyright registration, two years after the Basic Agreement was signed. Moreover, as Turner argued on appeal, it was the realistic commercial expectation of the parties that Bronston would seek to renew the copyright in the Film, otherwise Bronston would lose any federal copyright protection for any of the rights it retained by virtue of the Film falling into the public domain.[3]

Plaintiff argues that a grant of a perpetual copyright license is contrary to federal copyright law and policy, which grants a statutory monopoly for a limited duration only, and therefore the Basic Agreement's provisions regarding duration are void as against public policy. Plaintiff contends that the offending provisions should be removed from the contract and this Court should read the Basic Agreement as containing no provision regarding duration at all. Under copyright law, where a contract is silent as to the duration of the grant of copyright rights, the contract is read to convey rights for the initial copyright period only. see 3 Nimmer on Copyright § 10.10[F], at 10-98.

As explained below, we decline to decide whether a grant of "perpetual" copyright rights, that is, rights beyond the renewal period, is contrary to copyright law and policy. Even if such a grant is "void," however, we would not adopt plaintiff's analysis which would require the Court to ignore the manifestation of the parties, intention on the issue of duration. Instead, applying the principle of contractual interpretation that when a contract "may be performed lawfully, as well as in violation of the law, it is valid, . . . [and the] construction of a contract should be, when it is possible, in favor of its legality," Shedlinsky v. Budweiser

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[3] If it failed to renew, Bronston would also have had little prospect of negotiating a new distribution agreement in the event that MGM declined to continue distributing the Film after 21 years from the Film's general release or 24 years from the date of the Basic Agreement, because it would be unable to provide an exclusive distribution license with federal copyright protection once the initial term expired.

Brewing Co., 163 N.Y. 437, 439, 57 N.E. 620, 620 (1900), the Basic Agreement can be lawfully interpreted to continue through the renewal period, thereby giving effect to the intention of the parties to the greatest extent possible consistent with the law.

C. A License Beyond the Renewal Term

The question as to whether a copyright proprietor may, consistent with federal copyright law and policy, license his or her copyright rights beyond the renewal term is one which has not been addressed by this Court.[4] The district court held that the Basic Agreement was "merely a contract between two private parties" and that contract "neither affect(ed] the process through which the Picture [would] fall into the public domain at the expiration of the renewal term, nor prevented others from distributing the Picture at that time." P.C. Films Corp. , 954 F. Supp. at 715. We are not convinced that this analysis gives sufficient weight to federal copyright law and the constitutional principle that a grant of copyright rights can be for "limited Times" only. See U.S. Const. Art. I, § 8, cl. 8. However, we believe it is premature and therefore inappropriate at this time to decide whether a contract purporting to grant a perpetual license of copyright rights, that is, rights that endure beyond the renewal period, is contrary to federal copyright law and policy. We need not resolve that issue because the renewal term for the film "King of Kings" does not expire until after 2036. We have held that the Basic Agreement's grant of distribution rights "in perpetuity" permits the defendants to continue to exercise their distribution rights through the renewal period. Thereafter, the work will go into the public domain. We decline to decide whether the Basic

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[4] The district court noted that several district courts and New York state courts have considered contracts granting "perpetual" licenses. P.C. Films Corp. v. Turner Entertainment Co., 954 F. Supp. 711, 714 (S.D.N.Y. 1997). However, in none or those cases did the courts consider whether a grant of copyright rights in perpetuity is consistent with federal copyright law.

Agreement imposes restrictions on P.C. Films beyond the renewal period.

III. CONCLUSION

For the foregoing reasons, we affirm the decision of the district court denying plaintiff's request for declaratory relief and affirm the court's dismissal of plaintiff's remaining claims on the same basis.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

P.C. FILMS CORP.,

Plaintiff,

V.

TURNER ENTERTAINMENT CO., MGM/UA HOME VIDEO, INC., MGM/UA COMMUNICATIONS CO. AND WARNER HOME VIDEO, INC.,

Defendants.

OPINION AND JUDGMENT
91 Civ. 1594

Barbara S. Jones, United States District Judge:

INTRODUCTION

The parties come before this Court for a trial on stipulated facts, seeking resolution of one narrow issue: whether a license for "perpetual" distribution rights to a motion picture either (i) terminated upon expiration of the film's initial copyright term or (ii) continues in perpetuity. This Court finds that the perpetual distribution rights endure beyond the initial copyright term.

BACKGROUND

On August 4, 1960, Samuel Bronston Products, Inc. ("Bronston") and Metro-Goldwyn-Mayer Inc. ("MGM") executed a detailed agreement ("Basic Agreement") concerning the production, financing, and distribution of a film entitled "King of Kings" (the "Picture"). The 163-page document was the culmination of months of negotiations conducted by sophisticated and expert parties, each represented by counsel. (Deposition of Benjamin Melniker, January 9, 1992, J.Ex. 15 at R335-37) (hereinafter "Melniker Deposition").

Pursuant to the Basic Agreement, MGM paid approximately $5 million to obtain exclusive distribution rights to the Picture.[1] Specifically, the Basic Agreement provides that:

> 8.[MGM] shall retain in perpetuity the exclusive right to distribute the said motion picture throughout the world except in Spain, Portugal, Germany, France, Belgium, Holland, and Luxembourg . . . .
>
> 11. Subject to the provisions of this agreement [MGM] shall be vested with the perpetual and exclusive right to distribute the said motion picture *"KING OF KINGS"* throughout the territories in which (MGM) acquires rights hereunder . . . .

(J.Ex. 1 at R19, R28). Benjamin Melniker, MGM Vice President and General Counsel, testified that "King of Kings" was "a very high cost picture" for MGM (Melniker Deposition, J.Ex. 15 at R283); he recalled the Bronston-MGM deal because of the "amount of money and what we thought was a very extraordinary picture." (Melniker Deposition, J.Ex. 15 at R338).[2]

Melniker further stated that it was MGM's policy to contract for "perpetual," as opposed to limited, distribution rights, and that MGM would not have financed the Picture for less than a perpetual term. (Melniker Deposition, J.Ex. 15 at R339-40). When asked whether Bronston had expressed a desire to limit the distribution rights to less than a perpetual term, he answered:

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[1] Under the Agreement, MGM would advance up to $4,000,000 for the production of the Picture. (J.Ex. 1 at R9) MGM also obtained an option to acquire the distribution rights in certain territories for payment of an additional $1,000,000; MGM exercised this option on December 2, 1960. (J.Ex. 3 at R170).

[2] Melniker is the only individual known by the parties to be available to testify and who has personal knowledge of the circumstances surrounding the Basic Agreement. (Statement of Stipulated Facts and Documents for Trial on Stipulated Facts, August 17, 1994, § A-16).

> Absolutely not. We would never have continued the negotiation if that happened. . . . There was no mention of any shorter term of distribution than perpetual. It was understood from the very – it was agreed to from the beginning, and the whole basis was on that term, perpetual term of distribution. Nobody brought up anything to the contrary.

(Melniker Deposition, J.Ex. 15 at R340).

The Picture was first exhibited on or about October 30, 1961. (Statement of Stipulated Facts and Documents for Trial on Stipulated Facts, August 17, 1994, § A.13) (hereinafter "Stip.") On October 15, 1962 the Copyright Office approved an application to register the copyright of the Picture. (Pl.Ex. 23 at R569-70).

The parties before this Court are successors in interest to the rights and obligations of Bronston and MGM. As a result of a 1967 bankruptcy proceeding, Bronston assigned its interests in the Basic Agreement and the copyright of the Picture to plaintiff P.C. Films. (Stip. § A.14, Pl.Ex. 30 at R592-97). Through a series of mergers and name changes, defendant Turner is the successor to MGM's distribution license, which it continues to exercise. (Stip. § A.24). Defendant Warner Home Video is distributing the Picture in home video pursuant to licenses obtained from Turner. (Stip. § A.15).

P.C. Film renewed the copyright effective December 18, 1989. (P1.Ex. 36 at R658). In September, 1990 P.C. Films advised the defendants that, in its view, the distribution license had terminated December 31, 1989. (Complaint, Ex. I).

On March 7, 1991, P.C. Films filed this suit. While the Complaint sets forth six claims for relief, the parties have agreed to proceed by a trial on stipulated facts on the first claim only, which seeks a declaratory judgment that (i) the distribution license granted in the Basic Agreement terminated on December 31, 1989, and (ii) defendants have no further distribution rights with respect

to the Picture.[3]

DISCUSSION

The gravamen of plaintiff's claim is that defendants' "perpetual" distribution rights given "in perpetuity" endure, in fact, for only 28 years -- the Picture's initial federal statutory copyright term. Any other interpretation, according to plaintiff, would be violative of the U.S. Constitution, Art. I, § 8, the Copyright Act of 1909 ("the Copyright Act")[4] Supreme Court precedent, New York law, and public policy.

In support of its argument, plaintiff recites the principles that Congressional copyright protection is necessarily limited in nature, and that a copyright proprietor can only contract with respect to what it owns. As applied, plaintiff's argument misconstrues both the nature of licenses related to copyrights, and judicial treatment of such contractual arrangements.

The essence of plaintiff's argument lies in the contention that the Copyright Act should preempt basic contract principles in the interpretation of the Basic Agreement's distribution rights license. This Court finds, however, that the private agreement between two parties -- which does not affect the movement of the Picture into the public domain once the initial and renewal terms have expired -- does not "alter rights granted by the copyright statutes as to invade the scope of copyright law or violate its policies." Fantastic Fakes v. Pickwick International, Inc., 661 F.2d 479, 483 (citing Bartsch v. Metro-Goldwyn-Mayer, Inc., 391 F.2d 150, 153 (2d Cir.), cert. denied 393 U.S. 826 (1968) and Kingsrow Enterprises, Inc. v. Metromedia, Inc. 397 F. Supp. 879, 881 (S.D.N.Y. 1975)). See also Bartsch, 391 F.2d at 153 ("The development of a 'federal common law' of contracts is justified only when required

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[3] The remaining claims include copyright infringement, unfair trade practice, wrongful possession, and failure to provide an accounting.)

[4] 35 Stat. 1075. In 1947, the Copyright Act was codified as 17 U.S.C. § 1 et seq. 61 Stat. 652. In 1976, Title 17 was revised in its entirety. 90 Stat. 2541.

by a distinctive national policy and . . . the general interest that copyrights, like all other forms of property, should be enjoyed by their true owner is not enough to meet this test." (citations omitted).

Plaintiff has not pointed to, and this Court has not found, any case holding that a contract expressly providing for a perpetual license incident to a copyright must be limited to the initial term of the copyright. Rather, plaintiff cites precedent dictating only that where a contract is silent as to the duration of licensed rights, such rights continue until the expiration of the initial copyright term. In April Productions v. G. Schirmer, 308 N.Y. 366, 375 (1955), plaintiff's main authority, the original license at issue stated no specific duration. The court held that a contract to pay royalties could not, in the absence of express language, be construed to require payment after the expiration of the underlying copyrights.[5]

In strong contrast, there exists a stream of cases involving perpetual license rights in which courts interpreting such licenses have not even discussed whether any constitutional limitations inhere from the Copyright Clause of the Constitution. Speaking in terms of contractual intent, courts routinely recognize the right to enter into perpetual licenses incident to copyrighted material. See DIC Animation City, Inc. v. McNaught Syndicate Inc., 1993 WL 77377, *1 (S.D.N.Y. March 15, 1993) (analyzing license for

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[5] Similarly, in Warner-Lambert Pharm. Co. v. John J. Reynolds, Inc., 178 F. Supp. 655, 664 (S.D.N.Y. 1959), aff'd 280 F.2d 197 (2d Cir. 1960), the court merely repeated the law of Schirmer: "(A) license agreement under a patent or copyright, in the absence of express language to the contrary, is construed to require the payment of royalties only until the expiration of the underlying grant. (emphasis added)" The court explained this rule in terms of contractual intent -- not constitutional limitations -- stating that "[s]uch a construction of the license is in all likelihood in accord with the unexpressed or imperfectly expressed intention of the parties." The court concluded that "when parties agree upon a license under a patent or copyright the court will assume, in the absence of express language to the contrary, that their actual intention as to the term is measured by the definite term of the underlying grant fixed by statute." Warner-Lambert, 178 F. Supp. at 664.

perpetual merchandising rights in cartoon); Brown v. Twentieth Century Fox Film Corp., 799 F. Supp. 166, 168 (D.D.C. 1992) (perpetual license to reproduce entertainer's television performance), aff'd 15 F.3d 1159 (D.C. Cir. 1994); Rooney v. Columbia Pictures Industries, Inc., 538 F. Supp. 211, 214 (S.D.N.Y.) (perpetual license to photograph and reproduce actor's appearances and likeness), aff'd 714 F.2d 117 (2d Cir. 1982), cert. denied, 460 U.S. 1084 (1983); General Mills, Inc. v. Filmtel International Corporation, 599 N.Y.S.2d 820, 821 (App. Div. 1993) (license for perpetual exhibition rights for an animated cartoon series); Tele-Pac, Inc. v.Grainger, 552 N.Y.S.2d 550, 551 (Sup. Ct. 1990) (license granting perpetual distribution rights of film) rev'd on other grounds, 570 N.Y.S.2d 521 (App. Div. 1991); Two Star Films, Inc. v. Movietonews, Inc., 420 N.Y.S.2d 30, 30 (App. Div. 1979) (license to distribute series of 39 films in perpetuity).[6]

Moreover, giving effect to perpetual license rights -- beyond the initial copyright term -- does no harm to copyright principles that seek to protect the public's interest in copyrighted material after the statutorily granted monopoly period. In Scott Paper Co. v. Marcalus Mfg. Co, 326 U.S. 249, 255-56 (1945), the Supreme Court explained the rationale behind patent (and, analogously, copyright) grants:

> By the patent laws Congress has given to the inventor opportunity to secure the material rewards for his invention for a limited time, on condition that he make full disclosure for the benefit of the public of the manner of making and using the invention, and that upon the expiration of the patent

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[6] The leading treatise on copyright, cited liberally by the parties, counsels no differently: "[T]he vast bulk of copyright contractual issues must be resolved under state law, given the silence of the Copyright Act in addressing such issues as . . . how to construe ambiguous contractual language." 3 Melville B. Nimmer and David Nimmer, Nimmer on Copyright §. 1.01[Bl [3] [a] (1992) The treatise continues: "Principles of contract law are generally applicable in the construction of copyright assignments, licenses and other transfers of rights." 3 Nimmer on Copyright § 10.08.)

> the public be left free to use the invention. . . . [T]he means adopted by Congress of promoting the progress of science and the arts is the limited grant of the patent monopoly in return for the full disclosure of the patented invention and its dedication to the public on the expiration of the patent . . . .
>
> The public has invested in such free use by the grant of a monopoly to the patentee for a limited time. Hence any attempted reservation or continuation . . . of the patent monopoly, after the patent expires . . . runs counter to the policy and purpose of the patent laws.

Scott Paper, 326 U.S. at 256. Similarly, in Brulotte v. Thys Company, 379 U.S. 29, 32-33 (1965), the Supreme Court declared that a patent royalty agreement projecting beyond the patent's expiration date is unlawful per se because "the free market visualized for the post-expiration period would be subject to monopoly influences that have no proper place there." Again, the Court emphasized the public domain: "The exaction of royalties for use of a machine after the patent has expired is an assertion of monopoly power in the post-expiration period when, as we have seen, the patent has entered the public domain." Brulotte, 379 U.S. at 33.

In strong contrast, defendants seek no such unlawful extension of copyright monopoly through exercise of their distribution rights. P.C. Films renewed its copyright; as such, defendants continue to exercise their license during the statutorily granted period. More importantly, the Basic Agreement is merely a contract between two private parties, under which plaintiff promises that its distribution of the Picture will be exclusively through defendants. The contract neither affects the process through which the Picture will fall into the public domain at the expiration of the renewal term, nor prevents others from distributing the Picture at that time. At that point, rather, the Basic Agreement will remain what it has always been – a distribution agreement between plaintiff and defendants, enforceable between the parties. Defendants do not contend otherwise.

Clearly, a copyright is different from a distribution license. The Copyright Act of 1909 itself implicitly made this distinction.

Under the act, a copyright was an indivisible "bundle of rights," incapable of assignments in parts. Goldwyn Pictures Corp. v. Howells Sales Co.,, 282 F. 9, 11 (2d Cir. 1922) First Financial Marketing Services Group, Inc. v. Field Promotions, Inc, 286 F. Supp. 295, 298 (S.D.N.Y. 1968) A transfer of anything less was a mere "license," not an assignment of the copyright itself. Misbourne Pictures Ltd. v. Johnson, 90 F. Supp. 978, 981 (S.D.N.Y. 1950) aff'd, 189 F.2d 774 (2d Cir. 1951) . Accordingly, analysis of a copyright's duration should not necessarily apply when considering the duration of a distribution license.

Plaintiff attempts to resuscitate its case with a discussion of renewal rights. In this regard, plaintiff points to a well established presumption against finding a conveyance of rights for the renewal period. See Corcovado Music Corp. v. Hollis Music, Inc., 981 F.2d 679, 684 (2d Cir. 1993) . Plaintiff then asserts that defendants, distribution rights do not extend beyond the initial copyright term because defendants did not specifically include the phrase "renewal term" in relevant Basic Agreement provisions pertaining to these rights.

Courts, however, do not require inclusion of the precise phrase "renewal term" to find conveyance of rights beyond the initial term. For example, in Siegel v. National Periodical Publications,Inc., 364 F. Supp. 1032, 1037 (S.D.N.Y. 1973), aff'd 508 F.2d 909 (2d cir. 1974), the court found that an instrument granting the exclusive right to use "forever" the characters and story of the Superman comic strip impliedly included rights in the renewal period.[7] See also Epoch Producing Corp. v. Killiam Shows, Inc., 522 F-2d 737, 747 (when "there is no specific reference in (the] assignment to the renewal term . . . [t]his deficiency has generally been held as a matter of law, absent

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[7] Tellingly, judicial discussion of renewal rights has hinged on contractual intent, and not on limitations inherent in the Copyright Clause. See, e.g., Venus Music Corp. v. Mills Music, Inc., 261 F.2d 577 (2d Cir. 1958); Edward B. Marks Music Corp. v. Charles K. Harris Music Publishing Co., 255 F.2d 518 (2d Cir. 1958), cert. denied 358 U.S. 831 (1958).

contrary evidence, to preclude a holding that a transfer of renewal rights was intended." (emphasis added)), cert. denied 424 U.S. 955 (1976). [8]

With these legal principles in mind, this Court now considers the contractual arrangement in this case. The Basic Agreement sets forth the duration of the licensed distribution rights -- they are "perpetual," and are given "in perpetuity." These terms are unambiguous and convey a plain, ordinary meaning. Perpetual means forever. Cruden v. Bank of New York, 957 F.2d 961, 976 (2d Cir, 1992) (a written contract "is to be interpreted so as to give effect to the intention of the parties as expressed in the unequivocal language they have employed") Hunt Ltd. v. Lifschultz Fast Freight, Inc., 889 F.2d 1274, 1277 (2d Cir. 1989) (contract terms should be given their plain and ordinary meaning). Thus, this Court finds that the parties to the Basic Agreement intended for the instrument to convey perpetual distribution rights, i.e. rights that last forever.

Even assuming some ambiguity could be found in the straight forward terms "perpetual" and "in perpetuity," Melniker's deposition -- cited liberally by defendants and plaintiff -- lays the issue to rest. See Sayers v. Rochester Tel. Corp. Supp. Mgmt. Pension Plan, 7 F.3d 1091, 1095 (2d Cir. 1993) (where contractual language is ambiguous, parties may submit extrinsic evidence of parties, intent as an aid to construe contractual language); State v. Home indem. Co., 495 N.Y.S.2d 969, 971 (App. Ct. 1985) (same). The testimony elaborates the meaning of these terms as intended by the negotiating parties:

Q In your understanding, does the term "perpetual" mean forever?

A Yes, it does.

Q In your understanding, when did the perpetual term end?

---

[8] This result is consistent with the approach outlined in Nimmer on copyright: "[I]t cannot be stated that no language short of express mention of renewals or extensions will be effective to convey renewal rights. It is the intention of the parties as derived from their written language and, where admissible, extrinsic evidence, which controls." 2 Nimmer on Copyright § 9.06 [A].

A It doesn't end. We have that picture.
Q Would it be for 30 years?
A It would be forever.
Q A hundred years?
* * *
A Forever.

(Melniker Deposition, J.Ex. 15 at R294) Moreover, Melniker's statements indicate that discussion pertaining to distribution rights occurred separately from that regarding the underlying copyright retained by Bronston. (Melniker Deposition, J.Ex. 15 at R344-45).

Accordingly, this Court finds that the Basic Agreement's contractual language is both plain and unambiguous in its provision of perpetual distribution rights. Even if this Court were to find an ambiguity, Melniker's testimony reaffirms that the parties intended to convey perpetual rights.

Finally, this Court notes that any other result reached would work an injustice not only to the parties, but more generally to those contracting in the film distribution and financing industry. Plaintiff's suit seeks termination of a contract that is standard in the industry, under which it is bound by assignment. For example, the Entertainment Industry Contracts Negotiating and Drafting Guide advises that a party drafting a film production-financing/distribution agreement should "specify Territory and Term, e.g. the world and in perpetuity." The Guide further advises that "distribution rights can be treated distinctly from the copyright ownership in the picture," and that "[i]n a commonly-used arrangement . . . the financier/distributor will want the sole and exclusive right to distribute the picture by any and all media throughout the world in perpetuity." 1 Donald Farber, Entertainment Industry Contracts 15-51 (1994). See also Renee Harmon, The Beginning Filmmaker's Business Guide: Financial, Legal, Marketing, and Distribution Rights of Making Movies 89 (stating that distribution period for distribution agreement is "usually perpetuity"); John W. Cones, Film Finance & Distribution 147 (defining distribution agreement as "the contract between a film's producer and its distributor through which the distributor commits to distribute the film . . . for a set period of time (sometimes in perpetuity)"). Plaintiff's argument would call such standard contracts into question, undercutting normal

commercial transactions in the film industry.

CONCLUSION

For the reasons stated above, this Court determines that defendants, distribution rights were not coterminous with the Picture's initial copyright term. As such, this Court finds for defendants, and denies plaintiff's request for declaratory relief. The Clerk is directed to enter judgment accordingly.

BARBARA S. JONES

United States District Judge
Dated: New York, New York
January 30, 1997

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

P.C. FILMS CORP.,

Plaintiff,

-against-

91 CIV 1594 (BSJ)

TURNER ENTERTAINMENT CO.,
MGM/UA HOME VIDEO, INC.,
MGM/UA COMMUNICATIONS CO.,
AND WARNER HOME VIDEO INC.,

Defendants.

Whereas the above-entitled action having been assigned to the Honorable Barbara S. Jones, United States District Judge, who on January 30, 1997, having issued her Opinion (78012), finding for defendants and denying plaintiffs request for declaratory relief it is,

ORDERED, ADJUDGED AND DECREED: That pursuant to the Court's Opinion (78012) dated January 30, 1997, the court determines that the defendants' distribution rights were not coterminous with the picture's initial copyright term, accordingly, the court finds for defendants, and denies plaintiffs request for declaratory relief.

DATED: New York, New York
February 18, 1997

JAMES M PARKISON
CLERK
BY:
DEPUTY CLERK

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

P.C. FILMS CORP.,

Plaintiff,

91 Civ. 1594
ORDER

TURNER ENTERTAINMENT CO.,
MGM/UA HOME VIDEO, INC.,
MGM/UA COMMUNICATIONS CO.
AND WARNER HOME VIDEO, INC.,

Defendants.

Barbara S. Jones, United States District Judge:

This Court previously issued an opinion on plaintiff's first cause of action ("Previous Opinion"), dated January 30, 1997, finding for defendants and denying plaintiff's request for declaratory relief.

Whereas the parties have agreed that the Previous Opinion governs disposition of plaintiff's additional five claims, this Court dismisses these claims with prejudice.

Pursuant to the parties' agreement, defendants' counterclaims are dismissed without prejudice.

The Clerk is directed to enter final judgment accordingly.

So ordered.

BARBARA S. JONES

United States District Judge
DATED: White Plains, NY
March 14 , 1997

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

P.C. Films Corp,.

Plaintiff,

-against-

Turner Entertainment Co.,
MGM/UA Home Video, Inc.,
MGM/UA Communications Co.
And Warner Home Video, Inc.,

Defendant,

91 CIVIL 1594 (BSJ)

JUDGMENT

Whereas the above entitled action having been assigned to the Honorable Barbara S. Jones, U.S.D.J., and the Court thereafter on March 14, 1997, having handed down its order, whereby the Court previously issued an opinion on plaintiff Is first cause of action ("Previous Opinion") , dated January 30, 1997, finding for defendants and denying plaintiff's request for declaratory relief.

Whereas the parties have agreed that the Previous opinion governs disposition of plaintiff's additional five claims, this Court dismisses these claims with prejudice.

Pursuant to the parties' agreement, defendant's counterclaims are dismissed without prejudice it is,

ORDERED, ADJUDGED AND DECREED: That parties have agreed that the Previous opinion governs disposition of plaintiff's additional five claims, this Court dismisses these claims with prejudice.

Pursuant to the parties, agreement, defendants, counterclaims are dismissed without prejudice.

Dated: White Plains, New York
March 18, 1997

James M. Parkinson,
Clerk

Copyright Act of 1909

§ 1. Exclusive rights as to copyrighted works

Any person entitled thereto, upon complying with the provisions of this title, shall have the exclusive right:

(a) To print, reprint, publish, copy, and vend the copyrighted work;

(b) To translate the copyrighted work into other languages or dialects, or make any other version thereof, if it be a literary work; to dramatize it if it be a nondramatic work; to convert it into a novel or other nondramatic work if it be a drama; to arrange or adapt it if it be a musical work; to complete, execute, and finish it if it be a model or design for a work of art;

(c) To deliver, authorize the delivery of, read, or present the Copyrighted work in public for profit if it be a lecture, sermon, address or similar production, or other nondramatic literary work; to make of procure the making of any transcription or record thereof by or from which, in whole or in part, it may in any manner or by any method be exhibited, delivered, presented, produced, or reproduced; and to play or perform it in public for profit, and to exhibit, represent, produce, or reproduce it in any manner or by any method whatsoever. The damages for the infringement by broadcast of any work referred to in this subsection shall not exceed the sum of $ 100 where the infringing broadcaster shows that he was not aware that he was infringing and that such infringement could not have been reasonably foreseen; and

(d) To perform or represent the copyrighted work publicly if it be a drama or, if it be a dramatic work and not reproduced in copies for sale, to vend any manuscript or any record whatsoever thereof; to make or to procure the making of any transcription or record thereof by or from which, in whole or in part, it may in any manner or by any method be exhibited, performed, represented, produced, or reproduced; and to exhibit, perform, represent, produce, reproduce it in any manner or by any method whatsoever and...

§5. Classification of works for registration

The application for registration shall specify to which of the following classes the work in which copyright is claimed belongs:

. . . .

(l) Motion-picture photoplays.

(m) Motion pictures other than photoplays.

. . . .

§24. Duration, renewal and extension

The copyright secured by this title shall endure for twenty-eight years from the date of first publication, whether the copyrighted work bears the author's true name or is published anonymously or under an assumed name: *Provided,* That in the case of any posthumous work or of any periodical, cyclopedic, or other composite work upon which the copyright was originally secured by the proprietor thereof, or of any work copyrighted by a corporate body (otherwise than as assignee or licensee of the individual author or by an employer for whom such work is made for hire, the proprietor of such copyright shall be entitled to a renewal and extension of the copyright in such work for the further term of twenty-eight years when application for such renewal and extension shall have been made to the copyright office and duly registered therein within one year prior to the expiration of the original term of copyright: *And provided further,* That in the case of any other copyrighted work, including a contribution by an individual author to a periodical or to a cyclopedic or other composite work, the author of such work, if still living, or the widow, widower, or children of the author, if the author be not living, or if such author, widow, widower or children be nor living, then the author's executors, or in the absence of a will, his next of kin shall be entitled to a renewal and extension of the copyright in such work for a further term of twenty-eight years when application for such renewal and extension shall have been made to the copyright office and duly registered therein within one year prior to the expiration of the original term of copyright; *And provided further,* That in default of the registration of such application for renewal and extension, the copyright in any work shall determine at the expiration of twenty-eight years from first publication.

§26. Terms defined

In the interpretation and construction of this title, "the date of publication " shall in the case or a work or of which copies are reproduced for sale or distribution be held to be the earliest date when copies of the first authorized edition were placed on sale, sold or publicly distributed by the proprietor of the copyright or under his authority, and the word "author" shall include an employer in the case of works made for hire.

. . . .

Copyright Act of 1976

§101. Definitions

Except as otherwise provided in this title, as used in this title, the following terms and their varient forms mean the following:

"Publication" is the distribution of copies or phonorecords of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending. The offering to distribute copies or phonorecords to a group of persons for purposes of further distribution, public performance, or public display, constitutes publication. A public performance or display of a work does not of itself constitute publication.

"Registration", for purposes of sections 205(c)(2), 405, 406, 410(d), 411, 412, and 506(e), means a registration of a claim in the original or the renewed and extended term of the copyright.

. . . .

§ 106. Exclusive rights in copyrighted works

Subject to sections 107 through 118, the owner of copyright under this title has the exclusive rights to do and to authorize any of the following:

. . . .

(3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;

. . . .

§ 117. Limitations on exclusive rights: Computer programs

Notwithstanding the provisions of section 106, it is not an infringement for the owner of a copy of a computer program to make or authorize the making of another copy or adaption of that computer program provided:

(1) that such a new copy or adaptation is created as an essential step in the utilization of the computer program in conjunction with a machine and that it is used in no other manner

. . . .

§ 203. Termination of transfers and licenses granted by the author

(a) **Conditions of termination.** In case of any work other than a work made for hire, the exclusive or nonexclusive grant of a transfer or license of copyright or of any right under a copyright, executed by the author on or after January 1, 1978, otherwise than by will, is subject to termination under the following conditions:

(1) In the case of a grant executed by opne author, termination of the grant may be effected by that author or, if the author is dead, by the person or persons who under clause (2) of this subsection, own and are entitled to exercise a total of more than one-half of that author's termination interest...

(3) Termination of the grant may be effected at any time during a period of five years beginning at the end of thirty-five years from the date of execution of the grant; or, if the grant covers the right of publication of the work, the period begins at the end of thirty-five years from the date of publication of the work under the grant or at the end of forty years from the date of execution of the grant, whichever term ends earlier.

. . . .

§ 301. Preemption with respect to other laws

(a) On and after January 1, 1978, all legal or equitable rights that are equivalent to any of the exclusive rights within the general scope of copyright as specified by section 106 in works of authorship that are fixed in a tangible medium of expression and come within the subject matter of copyright as specified by sections 102 and 103, whether created before or after that date and

whether published or unpublished, are governed exclusively by this title. Thereafter, no person is entitled to any such right or equivalent right in any such work under the common law or statutes of any State.

. . . .

§304. Duration of copyright: Subsisting copyrights

(a) Copyrights in Their First Term on January 1, 1978. -Any copyright, the first term of which is subsisting on January 1, 1978, shall endure for twenty-eight years from the date it was originally secured: *Provided,* That in the case of any posthumous work or of any periodical, cyclopedic, or other composite work upon which the copyright was originally secured by the proprietor thereof, or of any work copyrighted by a corporate body (otherwise than as assignee or licensee of the individual author) or by an employer for whom such work is made for hire, the proprietor of such copyright shall be entitled to a renewal and extension of the copyright in such work for the further term of forty-seven years when application for such renewal and extension shall have been made to the Copyright Office and duly registered therein within one year prior to the expiration of the original term of copyright: *And provided further,* That in the case of any other copyrighted work, including a contribution by an individual author to a periodical or to a cyclopedic or other composite work, the author of such work, if still living, or the widow, widower, or children of the author, if the author be not living, or if such author, widow, widower, or children be not living, then the author's executors, or in the absence of a will, his or her next of kin shall be entitled to a renewal and extension of the copyright in such work for a further term of forty-seven years when application for such renewal and extension shall have been made to the Copyright Office and duly registered therein within one year prior to the expiration of the original term of copyright: *And provided further,* That in default of the registration of such application for renewal and extension, the copyright in any work shall terminate at the expiration of twenty-eight years from the date copyright was originally secured.

. . . .

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

P.C. FILMS CORP.,

Plaintiff,

-against-

COMPLAINT
Docket No.

TURNER ENTERTAINMENT CO.,
MGM/UA HOME VIDEO, INC.,
WARNER HOME VIDEO, INC.,
AND MGM/UA COMMUNICATIONS CO.

Defendants.

Plaintiff, by its attorney, Carl I. Kaminsky, complaining of defendants, alleges:

JURISDICTION AND VENUE

1. This court has subject matter jurisdiction of the first, fourth, fifth and sixth claims under 28 U.S.C. §1332(a) because the plaintiff and defendants are citizens of different states and the matter and controversy exceeds the sum and value of FIFTY THOUSAND ($50,000.00) DOLLARS, exclusive of interest and costs. Venue is proper under 28 U.S.C. §1391(a).

2. This court has subject matter jurisdiction of the second and third claims under 28 U.S.C. §1338(a) which claims arises under the Copyright Act 17, U.S.C. §1, et seq. Venue is proper under 28 U.S.C. §1400(a).

THE PARTIES

3. P.C. Films Corp. (hereinafter referred to as "plaintiff") is a New York corporation, whose principal place of business is in the State of New York within the Southern District.

4. Defendant Turner Entertainment Co. (hereinafter referred to as "defendant Turner Entertainment") is a Georgia corporation, which has its principal office in Atlanta, Georgia and has an office and can be found within the Southern District.

5. Defendant MGM/UA Home Video, Inc. (hereinafter referred to as "defendant MGM/UA Home Video") is a Delaware corporation, which has its principal office in Los Angeles, California and has an office and can be found within the Southern District.

6. Defendant MGM/UA Communications Co. (hereinafter referred to as "defendant MGM/UA Communications") is a Delaware corporation, which has its principal office in Los Angeles, California and has an office and can be found within the Southern District.

7. Defendant Warner Home Video, Inc. (hereinafter referred to as "defendant Warner Home Video") is a Delaware corporation, duly authorized to do business in the State of New York and which has its principal office in Burbank, California and can be found within the Southern District... License Agreement required preparation and delivery to the plaintiff of truthful accounting.

. . . .

WHEREFORE, plaintiff demands

1. With respect to the first claim, declaratory judgment that defendant Turner Entertainment Co. have no further rights in the King of Kings License Agreement, nor does any licensees or any of such licensees' assignees including, but not limited to, defendants MGM/UA Home Video, Inc., MGM/UA Communications Co. and Warner Home video, Inc. have any further rights with respect to the Picture.

2. With respect to the second and third claims

(a) defendants, their agents, servants, employees and attorneys and each of them be enjoined during the pendency of this action and permanently from

(i) infringing the copyright to the Picture evidenced by Renewal Certificate No. RE448607 owned by plaintiff in any manner;

(ii) distributing copies of the Picture to the public by sale or other transfer of ownership by rental, lease or lending;

(iii) performing the Picture publicly;

(iv) reproducing the Picture and copies;

(v) preparing derivative work based on the copyrighted work and to perform the Picture publicly;

(vi) displaying individual images of the Picture publicly or privately; and

(vii) taking any act which would interfere with any rights of plaintiff under the 1909 Copyright Act, as amended and the 1976 Copyright Act, as amended.

(b) Defendants and each of them be required to pay to plaintiff

such damages as plaintiff has sustained in consequence of each defendant's respective infringement, subsequent to December 31, 1989 of the copyright and said unfair trade practices and unfair competition and to account for

(i) all monies or any rights of property, tangible or intangible, to acquire or have right to any property right resulting from each defendant's infringement;

(ii) all gains, profits and advantages derived from each of the defendants by said trade practices and unfair competition or gains, profits and advantages derived by each defendant by its respective infringement of plaintiff's copyright or such damages as to this Court shall appear proper in accordance with the copyright statutes, but in no event shall each defendant be liable not less than the sum of ONE HUNDRED THOUSAND ($100,000.00) DOLLARS.

(c) Defendants be required to deliver up to be impounded during the pendency of this action all copies of the Picture and other Picture Materials in each of the respective defendant's possession or under its control and to deliver up for destruction all infringing copies for making such infringing copies.

(d) Defendants, jointly and severally, pay to plaintiff attorney's fees and costs to be allowed to the plaintiff by this Court.

3. With respect to the fourth claim

(a) declaring that plaintiff is the owner of the Picture Materials entitled to its immediate possession and each of the items;

(b) directing defendant Turner Entertainment Co. to immediately deliver the Picture Materials and each of the items to Plaintiff; and

(c) in the event possession of the Picture Materials cannot be obtained, that plaintiff have judgment for THIRTY MILLION ($30,000,000.00) DOLLARS with interest thereon from December 31, 1989.

4. With respect to the fifth claim

(a) declaring that plaintiff is the owner of the Videocassette Materials entitled to its immediate possession;

(b) directing defendants MGM/UA Home Video, Inc., MGM/UA Communications Co. and Warner Home Video, Inc. to immediately deliver the Videocassette Materials to plaintiff;

(c) in the event possession of the Videocassette Materials cannot be obtained, that plaintiff have judgment for FIFTY THOUSAND

($50,000.00) DOLLARS with interest thereon from December 31, 1989.

5. With respect to the sixth claim

(a) defendants account for all its acts and for all monies received by it from its exercise of the King of Kings License Agreement;

(b) defendants pay all monies shown by the account to be due the plaintiff; and for such other and further relief as this court deems proper, together with the costs of this action.

Dated: New York,
New York February 26, 1991

CARL I. KAMINSKY
Attorney for Plaintiff
Office & P.O. Address
60 East 42nd Street
New York, New York 10165
Tel. No. (212) 687-2080
S.S. #6165

APPLICATION FOR REGISTRATION OF A CLAIM TO COPYRIGHT in a motion picture - L-M IP 23206

1. Copyright Claimant and Address -
METRO-GOLDWYN-MAYER INC. and SAMUEL BRONSTON PRODUCTIONS, INC., 1540 Broadway, New York 36, N.Y.
2. Title -
KING OF KINGS
3. Nature of Work -
Photoplay, 14,444 feet
4. Author -
METRO-GOLDWYN-MAYER INC. and SAMUEL BRONSTON PRODUCTIONS, INC. 1540 Broadway, New York, 36, N.Y.
5. Date of Publication -
October 30, 1961 : Place - U.S.A
7. Charge to -
M.G.M. MOTION PICTURE DEPOSIT
8. Refund should be sent to -
METRO-GOLDWYN-MAYER INC., 1009 New Jersey Ave. N.W. WASHINGTON D.C.
9. Send Certificate to -
METRO-GOLDWYN-MAYER INC., 1009 New Jersey Ave. N.W. WASHINGTON 1, D.C.
10. Certification -
s/ O. Ebert

For Copyright Use Only:
Application Received - Oct 15 1962
Two Copies Receiver - Oct 15 1962
Title and Description receiver - Oct 15 1962
RE 448-607
Renewal - RE 1647-633

Know all men by these presents: That for good and valuable consideration, receipt of which is hereby acknowledged, the undersigned, Samuel Bronston Productions, Inc., as co-copyright owner with Metro-Goldwyn-Mayer, Inc., of the certain feature

motion picture presently entitled "King of Kings", which was registered for copyright in the Copyright Office of the United States of America as a published work by and in the name of the undersigned and Metro-Goldwyn-Mayer, Inc. on October 30, 1961, No. LP 23206, hereby confirms that all of its rights in said motion picture are now held by P.C. Films Corp., a New York corporation, under and pursuant to a Plan of Reorganization dated November 15, 1967, between the undersigned and P.C. Films Corp., which said Plan of Reorganization being by this reference thereto made a part hereof. The undersigned hereby also confirms, grants and assigns, all of the rights, licenses, privileges and interests of the undersigned in said work during the original term of said copyright and any permissible renewals or extensions thereof. Furthermore, the undersigned warrants and represents that it has not heretofore made any grant, encumbrance or other disposition to any others of any right, title or interest in said work.

Dated: November 15, 1967

SAMUEL BRONSTON PRODUCTIONS, !NC.

By: John Rubinich, Secretary

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS:

On the 15th day of November, 1967 before me came John Rubinich, to known, who, being by me duly sworn, did depose and say that he resides at 57-10 43rd Avenue, Woodside, New York; that he is the Secretary of SAMUEL BRONSTON PRODUCTIONS, Inc. the corporation described in, and which executed, the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal' that is was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

CERTIFICATE OF REGISTRATION Form RE
United States Copyright Office

This certificate issued under the seal of the copyright Office in acccordance with Title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Barbara Ringer
Acting Register of Copyrights

Registration Number
Number RE 448-607
Effective date of Renewal Registration
Date Dec 18 1989

1. Renewal Claimants, Address and Statement of Claim -
(see instructions)
Name - P.C. Films Corp.
Address - 60 East 42nd Street, Suite 2320, New York, New York 10165
Claiming as - Proprietor of a copyright in a work made for hire

2. Title of Work in Which Renewal is Claimed
KING OF KINGS, Samuel Bronston Productions. Released by Metro-Goldwyn Mayer. 151 Minutes, sound, Technicolor, 70mm Super Technirama.
Renewable Matter - Entire Work

4. Original Registration Number:
Lp 23206
Original Copyright Claimant: Metro-Goldwyn-Mayer, Inc. and Samuel Bronston Productions, Inc.
If the original registration for this work was made in published form give:
Original date of publication - 10/30/61

RE 448-607 **Examined by GE**
Renewal Application Received Dec 18, 1989

Correspondence:
6. Carl I. Kaminsky
60 East 42nd Street, Suite 2320
New York, New York 10165
Date: November 7, 1989

Certification: I the undersigned hereby certify that I am (Check one) X duly authorized agent of P.C. Films Corp.
of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge;
Handwritten signature s/Carl I. Kaminsky
Typed or printed name: Carl I. Kaminsky

CERTIFICATE OF REGISTRATION

Form RE
United States Copyright Office
Registration Number
Number RE 442-633
Effective date of Renewal Registration
Date Dec 18 1989

1. Renewal Claimants, Address and Statement of Claim - (see instructions)

Name - Turner Entertainment Co. (Successor in Interest to Metro-Goldwyn-Mayer Inc.)

Address - One CNN Center, Box 105366 Atlanta, Georgia 30348-5366

Claiming as -Proprietor of a copyright in a work made for hire

Name - Samuel Bronston Productions, Inc., c/o Turner Entertainment

Address - One CNN Center, Box 105366 Atlanta, Georgia 30348-5366

Claiming as - Proprietor of a copyright in a work made for hire

2. Title of Work in Which Renewal is Claimed

KING OF KINGS

Renewable Matter - Blank

3. Authors of Renewable Matter -

Metro-Goldwyn-Mayer Inc. and Samuel Bronston Productions, Inc.

4. Original Registration Number:

Lp 23206

Original Copyright Claimant: Metro-Goldwyn-Mayer, Inc. and Samuel Bronston Productions, Inc.

If the original registration for this work was made in published form give:

Original date of publication - 10/30/61

RE 442-633 **Examined by: BC**

Renewal Application Received
October 25, 1989

Correspondence

6. Turner Entertainment Co.
   One CNN Center, Box 105366
   Atlanta, Georgia 30348-5366

Certification: I the undersigned hereby certify that I am (Check one) X duly authorized agent of Turner Entertainment Co.
of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge;

Andrew J. Velcoff, Vice-President
October 20, 1989

Motion Picture Agreement

Between the United States of America, acting through the Librarian of Congress (herein referred to as the Librarian), and-

METRO-GOLDWYN-MAYER INC. and SAMUEL BRONSTON PRODUCTIONS, INC.
(herein referred to as the Claimant).

WHEREAS:

(a) The undersigned Claimant expects to deposit in the Copyright Office, from time to time, copies of various motion pictures for the registration of its claims of copyright therein; and

(b) The copies so deposited are subject to the Librarian's determination, pursuant to section 213 of Title 17, United States Code, as to whether such copies shall be added to the collections of the Library of Congress (herein referred to as the Library); and

(c) The librarian will ultimately select, from among the various motion pictures so deposited, those of which one copy is to be added to the Library's collections; and pending such selection, one copy of every motion picture deposited is to be kept available for addition to the Library's collections; and

(d) Because of the high cost of making copies of motion pictures, the Claimant desires that the copies so deposited by it be released to it, as soon as possible after deposit, for its use in commercial exhibition of the motion pictures, pending the Librarian's selection of those to be added to the Library's collections; and

(e) In view of the expenses that the Librarian would necessarily incur in storing and maintaining the deposit copies of motion pictures pending such selection, and so long as the Librarian has assurance that a good copy of each motion picture ultimately selected by him will be delivered to the Library at its request, the Librarian does it advisable that the copies of motion pictures deposited by the Claimant be released to the Claimant upon the Claimant's obligation to deliver a good copy of each such motion picture to the Library at the Library's request.

NOW THEREFORE, it is hereby agreed that;

1. The Claimant hereby requests, and the Librarian hereby agrees, that the copies of each motion picture deposited by the Claimant for copyright registration will be released to the Claimant, subject to the terms of this Agreement, provided that this Agreement shall not apply to newsreels.

2. During the period of two years after the release of the deposit copies to the Claimant, or until one copy is delivered to the Library in compliance with paragraph 3, the Claimant will at all times keep in its custody or control one good copy of the motion picture as the property of the Library and subject to the Library's order.

. . . .

6. The Librarian may terminate this Agreement at any time upon thirty days' notice to the Claimant. Such termination shall apply only to motion pictures of which copies are thereafter deposited by the Claimant, and shall not affect the rights of the Library or the obligations of the Claimant with respect to any motion pictures of which copies have been released to the Claimant under paragraph 1.

7. This Agreement shall be binding on the successors and assigns of the Claimant. It two or more Claimants (whether signatory to this copy or other copes of this Agreement) request the release to any of them of copies of a particular motion picture, they shall be jointly and severally
responsible as Claimants with respect to that motion picture.

The United States of America

Executed Sept. 4, 1962 by s/ L. Quincy Mumford
Librarian of Congress

METRO-GOLDWYN-MAYER, INC.
Claimant

by s/ Benjamin Melnick
Attorney in fact for Claimant
Title - Vice-President
Address 1540 Broadway, New York, NY

SAMUEL BRONSTON PRODUCTIONS, INC.
Claimant
by s/ Leon Potlach
Title - Vice-President
Address - 505 Park Avenue
New York 22, NY

METRO GOLDWYN-MAYER, INC.
1540 Broadway
New York, New York

Dated 8/4/60

Samuel Bronston Productions, Inc.,
15 East 48th Street,
New York, N. Y.

Gentlemen:

You have Informed us that your company, under the terms of a participation agreement between Samuel Bronston Productions, Inc. and Nazareth Production Company (a New York Limited Partnership in which at the present time Pierre S. du Pont 3rd is a limited partner and Samuel Bronston is the general partner) has in production a motion picture based on the life of Christ entitled "KING OF KINGS".

You have further informed us that, pursuant to the provisions of the aforesaid participation agreement, as amended, the distribution rights in this motion picture for Germany, France, Belgium, Holland and Luxembourg have been assigned to Nazareth Production Company.

In addition, we understand that the distribution rights for Spain and Portugal are to be completely excluded from this agreement and from all other agreements and arrangements between us.

You have also advised us that Caribe Curacao, N.V., a Netherlands Antilles corporation, has been assigned all distribution rights in this motion picture, except as to Spain, Portugal, Germany, France, Belgium, Holland and Luxembourg, which rights are held by Caribe Curacao, N.V. as security in connection with certain loans made to you by that company and to secure certain guarantees given by Caribe Curacao, N.V. and/or its affiliated companies on your behalf. You have assured us that these distribution rights held as security by Caribe Curacao, N.V. will be released to us free and clear of any and all liens of every kind,

subject to and in accordance with the terms and conditions which are hereinafter more specifically stated.

You desire to grant to us and to cause Caribe Curacao, N.V. to release to us, and we are desirous of acquiring, world distribution rights (except as hereinabove and hereinafter limited) in this motion picture. Accordingly this letter, its Exhibits and all other agreements herein incorporated by reference, shall constitute the entire agreement between us, except for such amendments as we may in writing and from time to time mutually agree upon, with respect to the production by you and the distribution by us of said motion picture.

1. In consideration of the mutual covenants and agreements between us as set forth herein and as set forth in the distribution agreement attached hereto (the references herein to the distribution agreement attached hereto shall mean and refer to Exhibit "I" attached hereto), you hereby agree, subject to the terms and conditions hereof, to produce the "photoplay" (the term "photoplay", wherever used herein, shall mean the motion picture production entitled "KING OF KINGS" at its then stage of production, post-production, release, etc., and this term is used interchangeably herein with the term "motion picture") in accordance with the provisions hereof and to deliver such "photoplay" to us promptly upon its Completion, and we hereby agree that upon your delivery to us of the completed "photoplay", (so produced in accordance with the provisions hereof), we will undertake to distribute it (in accordance with this agreement and EXHIBIT "I" attached hereto) in the territories in which we have acquired the distribution rights.

. . . .

3. Said photoplay shall be a feature motion picture, with such artistic, pictorial and dramatic quality so as to describe it as a Class "A" photoplay suitable and desirable for presentation to the public in first-class motion picture theaters throughout the world.

It is acknowledged that by reason of the select matter of the photoplay (i.e., the life of Christ), the photoplay may be banned from import and/or exhibition in certain countries and/or territories.

Said motion picture shall be an English-language motion picture (that is, photographed and recorded with the dialogue, singing and other lip-movement elements being in the English language), photographed for wide-screen presentation and in color, and for such purpose the Technirama Technicolor processes shall be used. If for any reason these processes are not employed we shall have approval of the color and wide-screen process which you may desire to substitute therefor. Said motion picture is being photographed and produced in Spain, except with respect to certain recording, dubbing, synchronization, cutting and editing which, at your option, may be done at the Metro-Goldwyn-Mayer British Studios in London, England if, at the time you require such facilities, same are available for your use.

The principal photography of the said motion picture commenced on May 9, 1960. You have estimated that the period of shooting in Spain will be twenty (20) weeks.

Notwithstanding the foregoing, the final cutting and editing of the photoplay shall be performed in cooperation with the Head of our Studios in California, and if we elect, all or part of such cutting and editing shall be performed at our said California Studios and any extra cost caused by the cutting and editing being performed at our Studios in California (instead of at some other place) shall be advanced by us and shall be recouped as a direct distribution expense pursuant to sub-division (b) of Paragraph 8 below.

. . . .

8. Subject to our having delivered our note and letter commitment to Caribe Curacao, N.V., as provided in paragraph 7 above and subject to the provisions of paragraph 11 below, we shall retain in perpetuity the exclusive right to distribute the said motion picture throughout the world except in Spain, Portugal, Germany, France, Belgium, Holland and Luxembourg transferred to us by Caribe Curacao, N.V. upon the signing hereof. Such distribution rights shall include all the customary rights, which are more fully described in Exhibit "I' attached hereto, and all theatrical, non-theatrical, motion pictures and television rights and all other such rights and you represent, warrant and agree that the distribution rights which Caribe Curacao, N.V. shall release to us upon the execution hereof and which we shall retain as above

recited shall be and include all such rights and your representation, warranty and agreement to this effect in of the very essence of this agreement.

. . . .

11. Subject to the provisions of this agreement we shall be vested with the perpetual and exclusive right to distribute the said motion picture "KING OF KINGS" throughout the territories in which we acquire rights hereunder (to which shall be added the optioned territories mentioned in paragraph 9 above if we exercise our option), which such distribution rights shall be as described in paragraph 8 above and which shall also include our exclusive right to the benefit and enjoyment, for all purposes, of all negative, positive and other material related to such motion picture within our said territory, it being agreed, however, that we shall acquire neither copyright proprietorship nor legal title in the said motion picture nor in any of said properties related thereto, including ownership of the negative. Not withstanding that we shall have perpetual and exclusive distribution rights in the said motion picture as above provided, we agree that if at any time after a period of twenty-one (21) years following our general release of the said motion picture in a particular country of our territory or after a period of twenty-four (24) years from the date of this agreement, whichever shall first expire, such motion picture "KING OF KINGS" shall not be in distribution theatrically or on television in such country or territory, and on condition that we shall have recouped all moneys to which we are entitled to recoupment, together with our distribution fees and direct distribution expenses, you shall then have the right to notify us that you desire that the said motion picture be released theatrically or on television in such particular country or territory. We shall then either undertake such release, or if we fail to do so, within a reasonable time not to exceed ninety (90) days, then you shall have the right to negotiate for a release theatrically or on television by some other distributor, provided, however, you shall not conclude any distribution transaction with any such other distributor unless we shall first be given the right to preempt the proposed distribution terms and ourselves distribute in such country or territory, and further provided that in no event shall such third-party distributor's rights be granted for any period in excess of

three (3) years. In the event of a distribution in any such country or territory by a third-party distributor, then of course we shall not be entitled to any distribution fees or expenses with respect to receipts derived from such country or territory. Any such contract entered into with a third-party distributor in accordance with the foregoing shall require such third-party distributor to render copies of distribution statements to us, setting forth all receipts and all expenses deductible therefrom, and such statements shall be submitted to us no less frequently than each three (3) months during the term of the third-party distributor's distribution period. We shall also be entitled to copies of the distribution agreement with the third-party distributor and any and all other documents and agreements relating thereto.

Nothing contained herein shall detract from or in any way affect our continuing and perpetual right to receive forty percent (40%) of the "net profits", as hereinabove provided in paragraph 8, it being understood that such "net profits" shall be computed after the said third-party distributor's distribution fees and authorized distribution expenses have been recouped.

. . . .

19. It is understood and agreed that upon the delivery to us of the "work print" as is hereinabove in paragraph 7 provided, you shall grant and assign to us a first lien upon your ownership interest in the photoplay which shall be no less than undivided 75% ownership interest in whatever state of completion the photoplay may be and all properties therein including but without being limited to the copyright thereto and upon our right to share in the gross receipts and revenue derived or to be derived therefrom, said first lien shall secure the repayment to us of the face amount of the promissory note (Exhibit "X") which we are required to deliver to Caribe Curacao, N.V. pursuant to the provisions of paragraph 7 and the following additional amounts as and when such payments are made or such events occur:

(a) One Million Dollars ($1,000,000.00) should we deliver to Caribe Curacao, N.V. our promissory note (Exhibit "Z") in the amount of one Million Dollars ($1,000,000.00) as a result of our exercising our option according to the provisions of paragraph 9 above? and

(b) An amount equal to the amount of each and every additional

cash payment made by us to Caribe Curacao, N.V. as called for and pursuant to our unconditional letter commitment (Exhibit "Y"), and

(c) An amount equal to the amount of payments or advances made by us and which we are entitled to recoup pursuant to the provisions of either paragraph 8(c)A or 8(c)B, as the case may be, less such amounts computed under (a) and (b) above which are in duplication of the amount contemplated herein; and

(d) An amount equal to the amount of our unrecouped direct distribution expenses (see Exhibit "B" annexed to Exhibit "I" affixed hereto).

You further agree that upon the delivery to us of the "work print" as aforesaid, to execute or cause the execution of and delivery to us, from time to time, as we may desire, such chattel mortgages, supplemental mortgages, copyright mortgages, assignments and notices thereof, pledges and other security instruments (and short forms thereof for recording purposes) as we may desire, evidencing said lien in all countries and territories throughout the world and in the states of the United States.

You also agree that upon the delivery to us of the "work print" as aforesaid, to execute and deliver to us chattel mortgages complying with the foregoing provisions hereof for the countries of England and Spain, and the states of California and New York, the chattel mortgages for which latter jurisdictions shall be in the form as that annexed hereto as Exhibit "V". Each such security instrument shall be in a form complying with the laws of the country, state or territory in which the same is executed or with respect to which the same is to be recorded or filed and shall comply with the formalities required for the recordation or filing, which recordation or filing is permitted or mandatory. You further hereby irrevocably appoint, make and designate us your attorney-in-fact, with authority exercisable upon the delivery of the "work print" as aforementioned, to prepare and execute all such instruments for you and in your name and to record or file the same...

. . . .

EXHIBIT "I"

PROVISIONS RELATING TO PRODUCTION OF THE PHOTOPLAY

Section I

2. Contracts

. . . .

Each such contract shall also provide that the employee will fully keep and perform all of his obligations and agreements thereunder; that, if and to the extent permitted by law the Producer and its assigns shall be entitled to injunctive and other equitable relief to prevent a breach of the agreement by the employee; that, in the event that the Distributor assumes control of the production of the photoplay the employee shall render services for the Distributor under such contract if so required.

. . . .

WARRANTY AND INDEMNITY PROVISIONS

Section 2

. . . .

4. INDEMNITY: For the purposes of this Article and the succeeding Articles of this Section, the Distributor and its subdistributors and licensees and its and their officers, agents and employees, are hereinafter referred to as the "indemnitee". The Producer agrees to indemnify the indemnitee and each of them and to hold them and each of them harmless from and against any and all claims, actions, causes of action, liability, damages, judgments, decrees, losses, costs and expenses, including reasonable attorneys fees, which may be made, asserted, brought or obtained against or suffered, sustained, paid or incurred by them or any of them based upon, by reason of, or in connection with any breach or failure or claim of breach or failure of any of the warranties made in Article I of this section, including but not limited to any amount paid by any indemnitee in settlement of any such claim, action or cause of action.

5. CLAIMS: The Distributor is hereby granted authority and power of attorney to assert, prosecute, handle and settle ——— all

claims or actions and causes of action against any and all persons for the unauthorized or illegal use, copying, reproduction, release, distribution, exhibition or performance of the photoplay or any part or version thereof or of the literary, dramatic and/or musical material upon which it is based or which is used therein or any part or version thereof or for the enforcement or protection of all or any rights herein granted or purported to be granted to the Distributor, and any not recoveries obtained therefrom (after the deduction of all costs and expenses incurred in connection therewith) shall be included in the gross receipts hereunder. The Distributor may join the Producer as party plaintiff, as its attorney-in-fact, in any action brought pursuant to the foregoing. The Distributor is also hereby granted authority and power of attorney to handle, defend or settle all claims, actions and causes of action referred to in Articles 3 and 4 of this Section, or the Distributor may require the Producer to defend any claim, action or cause of action covered by Article 4 of this Section and to assume the full responsibility and cost of the defense or settlement thereof. The Producer shall have the right to cooperate and participate at its own expense in the defense and/or settlement of any claim, action or cause of action handled by the Distributor. The Distributor shall give notice of any such claim or litigation to the Producer. This term "action .. shall be deemed to include all manner of suits, actions and proceedings at law or in equity or before any administrative, judicial or governmental agency or before any ...

PROVISIONS RELATING TO DISTRIBUTION OF THE PHOTOPLAY

Section 3

DISTRIBUTION

1. DISTRIBUTION RIGHTS: The Distributor shall have and is hereby granted the sole and exclusive right and license, under copyright and other protection, throughout the license territory (as said license territory may be extended by the Distributor's exercise of option as provided for in the agreement to which this Exhibit is attached):

(a) To distribute, exhibit, exploit, market, televise, perform and otherwise use and deal in the photoplay (including the sound track thereof) and film, air and television trailers thereof, on film of any kind or size (including but not limited to 35mm., 16mm., and 8mm.), and by any other means or method now or hereafter known or invented publicly or privately, for any uses or purposes whatsoever, including theatrical, non-theatrical, home and commercial purposes and purposes of trader;

(b) Independently of the exhibition of the photoplay, but for the purpose of advertising and exploiting the photoplay, to reproduce and perform the sound track thereof and all other sound recorded in connection with the production of the photoplay, including the right to broadcast the same by radio and television with living actors or by electrical transcriptions or otherwise; and also to use such sound and soundtrack for the production of records for home use or sale to the public;

(c) To advertise the photoplay by any and every means (except as expressly provided to the contrary herein), and particularly but without limiting the generality of the foregoing, to exercise all rights, licenses and powers of every kind which the Producer has acquired or may acquire in or with respect to the literary, dramatic and/or musical material on which the photoplay is based or which is included therein and the names, voices and likenesses of actors, actresses and other personnel involved in the production of the photoplay, for advertising, publicity and exploitation purposes in connection with the photoplay, including (to the extent that the Producer has acquired or may acquire the same) radio, television, publication and commercial tie-up rights;

(d) To use the title or titles by which the photoplay is or may be known or identified;

(e) To permit, authorize and license others to exercise and sublicense all or any of the Distributor's rights and licenses hereunder.

2. DISTRIBUTORS OBLIGATION: The Distributor agrees to distribute the photoplay or cause it to be distributed in good faith in accordance with the business policies and practices of the Distributor....nor the Producer shall be entitled to any distribution fees with respect to any distribution of the photoplay under any distribution contract entered into by the Producer pursuant to the

provisions of this Article.

. . . .

9. COPYRIGHT: The Producer shall place a proper copyright notice in the main title of the photoplay, in conformity with the laws of the United States governing the form and content of copyright notices, designating the Producer as the copyright proprietor. The Distributor shall take such steps, if any, with regard to the registration of the copyright in the United States Copyright Office (in the name of the Producer as copyright proprietor), as it normally and customarily takes with respect to its own photoplays. The Distributor shall also take such steps with respect to obtaining or registering the copyright of the photoplay in foreign countries or territories of the license territory, an it normally and customarily takes with respect to its own photoplays and such copyright or copyrights may be taken in its own name or in the name of any of its subsidiaries, affiliated companies or licensees as copyright proprietor. The Distributor does not represent or warrant that the steps normally and customarily taken by the Distributor with respect to obtaining copyright, in the United states or elsewhere, are such that valid copyright will result, and assumes no responsibility or liability to the Producer should such steps be determined not to be sufficient for obtaining valid copyright. Notwithstanding that any foreign copyright or copyrights shall be taken in the name of the Distributor or its subsidiary or affiliated companies or licensees, an aforesaid, it is hereby understood and agreed that such copyright or copyrights shall be held in trust by the Distributor and such other companies for the Producer.

. . . .

14. ADVERTISING: The Producer agrees that the Distributor shall have the sole and exclusive right to advertise and publicize the photoplays and to cause them to be advertised and publicized, throughout the world, to such extent and by such means and media an it may determine, except as otherwise herein expressly provided to the contrary, and except as provided for in the agreement to which this Exhibit is attached with reference to the special advertising and exploitation unit and the selection of the

independent advertising agency (if any) to be used in connection with the distribution of the photoplay. It is further agreed that the Distributor shall have the sole and exclusive right, for the purpose of advertising and exploiting the photoplay:

(a) to publish and cause to be published and otherwise to use excerpts, dialogue, summaries, serializations, novelizations and short stories of or from or based upon the photoplay and the screenplay thereof and to publish other written material, whether similar or dissimilar to the foregoing, and whether or not specifically referring to the photoplay;

(b) to broadcast by radio and television, by living persons and/or from transcriptions or records or by other means, all or any part of the matter contained in the photoplay or upon which it is based or excerpts, dialogue, summaries, novelizations or dramatic adaptations thereof or based thereon;

(c) to use the names and likenesses of the cast and other personnel connected with the photoplay in connection with the advertising and exploitation of the photoplay, including commercial tie-ups. For the purposes of this agreement, a "commercial tie-up", is a type of advertising or exploitation in which some product, service or commodity, in addition to the photoplay, is advertised;

(d) to enter into and exploit commercial tie-ups with respect to the photoplay.

The rights of the Distributor under this Article shall be subject to such restrictions, if any, of which the Distributor is duly given written notice, as may be contained in the Producer's contract relating to the photoplay, but the Producer shall not agree to any restrictions which are not usual or customary in the motion Picture industry nor to any restrictions which in the judgment of the Distributor will unreasonably hamper or interfere with the proper exploitation of the photoplay. Without limiting the foregoing provisions, it is understood that the Distributor shall have the right to give reasonable advertising allowances to franchise holders, licensees and exhibitors and to arrange for and contribute to cooperative advertising, all such matters to be within the sole control of the Distributor. No advertising, publicity or exploitation of any kind relating to the photoplay shall be issued or

placed by the Producer without the prior written approval of the Distributor.

15. POSITIVE PRINTS: The Distributor shall order from Technicolor such number of positive prints, dupe negatives, fine grain prints and sound track of the photoplay or any part thereof, and replacements thereof, and order such other motion picture laboratory work from Technicolor an the Distributor shall deem necessary for the proper distribution of the photoplay. If for any reason Technicolor shall be unable to supply the prints and/or other laboratory work which Distributor may require or order, then it is agreed that Distributor shall have the right to obtain such prints and/or other laboratory work from any other source as Distributor may elect.

16. RESIDUAL RIGHTS IN LITERARY PROPERTY: The Producer shall not exercise or license any rights with respect to any literary property included in the photoplay or on which the photoplay is based at any time in the license territory, without the written approval of the Distributor; and, similarly, the Distributor agrees it will not exercise or license the exercise of any rights in or with respect to any such literary property as to the photoplay, except in connection with the advertising and exploitation thereof without the written approval of the Producer. Neither party shall remake the photoplay or produce any sequel thereto or authorize any other person so to do without the consent of the other party. Notwithstanding anything to the contrary elsewhere contained in this agreement, it is expressly agreed that the Producer shall not at any time, and shall not at any time have the right to, televise or license or permit others to televise the photoplay or any part thereof, except as expressly permitted by this Exhibit of the agreement attached hereto and then only upon and subject to the further conditions:

(a) that the producer, at its own expense, shall first comply with and perform all conditions and obligations, if any to which the Distributor may then be subject in connection therewith, including but not limited to the payment of any amounts payable in connection therewith under or pursuant to the provisions of any collective bargaining agreement or other agreement to which the Distributor is now or hereafter may become subject or a party, and

(b) that such televising of such photoplay or any part thereof

will not give rise to any right of cancellation of any such collective bargaining agreement. Notwithstanding anything herein to the contrary the restrictions contained herein shall not be applicable to the Distributor in the event that it "takes over" the Photoplay pursuant to applicable provisions of the agreement to which this Exhibit is attached.

. . . .

PROVISIONS RELATING TO GROSS RECEIPTS AND THE DISBURSEMENT THEREOF

Section 4

RECEIPTS AND DISBURSEMENTS

1. GROSS RECEIPTS: The term "gross receipts", as used herein,means all moneys actually paid to and received by the Distributor in dollars in the United States or in other currencies freely remittable to the United States as rentals or license fees for licenses to televise, exhibit or distribute the photoplay, except as follows:

. . . .

MISCELLANEOUS PROVISIONS

Section 5

. . . .

4. LAW GOVERNING CONTRACT: This agreement shall be construed pursuant to the laws of the State of New York. This agreement constitutes the entire agreement between the parties hereto and may be modified only by written instrument duly executed by each of the parties hereto. No person has any authority to make any representation of promises on behalf of either of the parties not set forth herein, and this agreement has not been executed in reliance upon any such representation or promise. No waiver by any party of any breach of this agreement shall be deemed to be a waiver of any preceding or succeeding breach.

6. DEFINITIONS: The following words and phrases as used

herein have the following meaning:

(a) "Motion picture" or "photoplay" means a talking motion picture as now known and all Improvements and developments thereof, whether now known or unknown.

(b) "Radio", "television" or similar terms shall include the present as well as all future developments of the radio and television arts.

(c) "Licensees" includes sub-licensees and "subsidiaries" includes sub-subsidiaries. "Affiliates" or "affiliated companies" means corporations affiliated through stock ownership or control.

(d) "Person" means any person, firm or corporation or other business organization or entity.

(e) "Distributor" includes, wherever the context so requires, its subsidiary and affiliated companies.

(f) Where references are made herein to theaters, operated or controlled by the Distributor, or any of its subsidiaries or affiliates, such references shall be construed as exclusive of theaters owned, but not actually operated, or the operation and management of which is not actually controlled by the Distributor or any such subsidiary or affiliate.

7. CAPTIONS: The captions of the various sections, Articles and Sub-Articles of this agreement are intended to be used solely for convenience of reference and are not intended and shall not be deemed for any purpose whatsoever to modify or explain or to be used as an aid in the construction of any of the provisions of this agreement.

EXHIBIT V

. . . .

Mortgage of Chattels
Assignment and Pledge

By this Mortgage, made this ...day of ...19... by SAMUEL BRONSTON PRODUCTIONS, INC.,...a Delaware Corporation, mortgagor, to METRO-GOLDWYN-MAYER, INC.,...a Delaware Corporation, mortgagee, the mortgagor, herein called "Producer" mortgages and assigns to and pledges with mortgagee the property herein described as security for the obligations hereinafter set forth.

1. Description of property. The property hereby mortgaged, pledged and assigned, is described as follows: (a) The feature length motion picture photoplay (herein referred to as the "picture") produced or to be produced by Producer, now entitled "KING OF KINGS"... which title is subject to change, based upon an original story by... and a shooting script by Philip Yordan... under Samuel Bronstein as producer, and to be distributed by Metro-Goldwyn-Mayer, Inc.

(b) All of the right title and interest of Producer in the literary, musical, dramatic and other material upon or from which in whole or in part, the picture is based or adapted or which is used or included in the picture, and the copyrights, renewals and extensions of copyrights, and rights of copyrights, in such material;

. . . .

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

P.C. FILMS CORP.,

Plaintiff,

-against-

TURNER ENTERTAINMENT CO.,
MGM/UA HOME VIDEO, INC.,
MGM/UA COMMUNICATIONS Co.,
and WARNER HOME VIDEO, INC.,

Defendants.

Deposition of BENJAMIN MELNIKER as a nonparty witness, taken by the defendants, pursuant to agreement, at the offices of Pryor, Cashman, Sherman & Flynn, Esqs., 410 Park Avenue, Now York, New York, on January 9, 1992 at 10:35 A.M., before Shauna Curry-Laurie, a shorthand reporter and notary public of the State of New York.

Q. Do you remember what was the nature of the proposed transaction between Bronston and Metro Goldwyn-Mayer? Do you remember?

Without referring to the agreement, do you remember the nature of the transaction, to your own knowledge?

A. Yes. We got -- we paid a certain amount of money, in return for which we got the perpetual distribution rights to "King of Kings" throughout the world. I think there was a time, and something was involved with an option or something like that.

Q. You are talking about a perpetual distribution.

How do you come to that answer, that there was perpetual distribution?

A. First of all, our policy was always to get perpetual distribution rights. Here, the amount of money five million sticks in my head, because it was that even figure and because of the lawyers involved dealing over this period. And that was an enormous amount of money...

. . . .

Q. Under your understanding, and I know the contract speaks for itself and I ask you to read this. I don't want to make a speech, but there's a reason. I'm trying to elicit your testimony with respect to the negotiation, if any, of copyright ownership and distribution right, term of distribution rights. So I will ask you a question now.

Q. To your own knowledge, do you remember any of the negotiations with respect to the term of distribution rights for the proposed picture, "King of Kings"?

A. Yes. We were to get perpetual distribution rights.

Q. How do you know that? Who told you that?

A. I know this because that is the deal that was given to me by the executive of the company and that is the deal I reported to the board of directors. That's the deal they approved, and that's the deal that was incorporated in the agreement.

. . . .

Q. Did you have any conversations with Mr. Sam Bronston with respect to the term of the distribution rights?

A. I don't recall specific conversaton with Bronston, though I may have.

. . . .

Q. What is your understanding of perpetual right?

A. Perpetual rights. Perpetual distribution rights means that the company granted the perpetual rights would be able to distribute the picture perpetually.

. . . .

Q. In your understanding, does the term "perpetual" mean forever.?

A. Yes, it does.

Q. In your understanding, when did the perpetual term end?

A. It doesn't end. We have that picture.

Q. Would it be for 30 years?

A. It would be forever.

Q. A hundred years?

MR. FERBER: He has answered the question.

Q. Would it be for 100 years?

A. Forever.

. . . .

Q. Metro-Goldwyn-Mayer was listed as a claimant; is that correct?

A. Claimant?

Q. yes, claimant for copyright.

A. This was done in order to protect the copyright on the picture. And in order to do that under the practice Metro-Goldwyn-Mayer had to be part of this thing and be owner of the copyright and to have its name there, in order to got the benefit of the copyright under the arrangement with the Library of Congress.

. . . .

Q. During the negotiation for "King of Kings" do you recall any representatives of any of the other parties, you know, Nazareth Productions or Samuel Bronston Productions, ever expressing a desire or expressing a wish that the distribution license which MGM would acquire in "King of Kings" would be for less than a perpetual, unlimited term?

A. Absolutely not . We never would have continued the negotiation if that happened.

MR. KAMINSKY: Note my objection. But it is a matter of conjecture.

Q. So you do not recall --

A. There was no mention of any shorter term of distribution than perpetual. It was understood from the very -- it was agreed to from the beginning, and the whole basis was on that term, perpetual term of distribution. Nobody brought up anything to the contrary.

. . . .

Q. As best you can recall, would MGM be in the position of putting $5 million in the investment of a motion picture to be produced by another entity, if it got distribution rights for less than perpetual term?

A. We would not do that. It was against our policy. we did not do it and we would not do it....

A. Yes.

. . . .

Q. In drafting that agreement, did you make any nexus or connection between the duration of the distribution license which MGM would acquire and the term of the copyright in the motion papers?

MR. KAMINSKY: The motion papers -

MR. FERBER: Please don't interrupt. It is my examination.

Q. Do you want the question read back? A Yes.

(A portion of the record was read.)

MR. FERBER: Change "papers" to "pictures."

A. (Continuing) There was no grant -- we got perpetual distribution rights from the entity that was able to give us that grant. That was a perpetual grant to distribution rights. Now, the copyright is something different, and the copyright is for the original term and then it was renewed. But the distribution rights go on continuously. The grant is not dependent upon -- it is not dependent in the sense that it's not coterminous with the first period of copyright.

Q. Did any one of the attorneys, on either side of the negotiations for "King of Kings," discuss during the negotiations describing the duration of the distribution license in terms of the duration of the copyright terms?

A. Absolutely not.

. . . .

Q. During the negotiation for "King of Kings" do you recall any representatives of any of the other parties, you know, Nazareth Productions or Samuel Bronston Productions, ever expressing a desire or expressing a wish that the distribution license which MGM would acquire in "King of Kings" would be for less than a perpetual, unlimited term?

A. Absolutely not. We never would have continued the negotiation if that happened.

. . . .

Q. Do you recall if MGM's status had an impact on its bargaining power when it did motion picture deals?

A. Yes. There is no question about it, that because of our strong position in the field as I described, as well as our financial situation which was always very good, very healthy, our general representation, we were able to have a very strong position in bargaining with the other side, whether it came to producers, actors or what have you.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

P.C. Films Corporation
Plaintiff,
v.

Turner Entertainment Company, et al.

Defendants.

----------x

January 16, 1997
10:30 a.m.

Before:
BARBARA S. JONES
District Judge

Appearances

Carl I. Kaminsky, Esq.
Richard L. Yellen, Esq.
Attorneys for Plaintiff

Pryor, Cashman, Sherman & Flynn
Attorneys for defendants
by:
Stephen Huff, Esq.
Thomas J. Ferber, Esq.
Paige Moore, Esq.
Gary Kline, Esq.

(In Open Court)
(Case Called)

THE COURT: All right. First of all, let me apologize for the delay this morning. I assure you it was unavoidable, so now perhaps we can get started.

I know you were all in some time ago for an initial conference, and I don't think we got very far. It has been some time since

then. What I'd like to do this morning is, if you would, have you give me your argument with respect to the motion. It will help me in deciding the motion, and I know you have been waiting a long time, so what I want you to know is I have directed my attention to this case now. After the argument, we will decide it and hopefully you'll have an opinion before the end of the month so that you can feel that there is something happening here.

. . . .

THE COURT: Can I ask you one question, Mr. Huff?

Is there anything I should make out of the one argument Mr. Kaminsky made about the fact there is no expression about a renewal term in this area, that there are supposedly renewals mentioned in other areas of the contract or renewal terms mentioned?

MR. HUFF: I am grateful you brought it up for this extent. It was brought up, it was in the contract to trigger us to perform a task of sorts at one moment or secure us a right in default, but the reason we don't talk about things like that in the essence of the agreement, in the body of this, we weren't acquiring copyright rights.

Thank you.